

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C.
20210

IN THE MATTER OF)	
)	
ARMANDO MACHADO)	
)	
Complainant)	
)	
v.)	Case No. 80-
)	CETA-494
SOUTH FLORIDA EMPLOYMENT)	
AND TRAINING CONSORTIUM)	
)	
Respondent)	

DECISION AND ORDER

This case is before me on remand from the United States Court of Appeals for the Fifth Circuit. ^{1/} It arises under the Comprehensive Employment and Training Act and Department of Labor regulations. That court granted a joint motion by the Department of Labor and the Complainant to set aside one of the findings of fact in the decision of the Administrative Law Judge of April 30, 1981 and to remand the matter to the Secretary for further proceedings consistent with the corrected finding of fact. I issued a notice of briefing schedule on December 22, 1981, but none of the parties filed briefs.

Briefly, the facts of this case are as follows. Complainant Armando Machado was employed by the South Florida Employment and Training Consortium (SFETC), a subgrantee of the prime sponsor

^{1/} The states of Georgia, Alabama and Florida are now in Eleventh circuit.

METROPOLITAN DADE County, as affirmative action coordinator in May, 1977. It was stipulated in the Court of Appeals that Mr. **Machado** was a regular employee of SFETC, not a CETA participant employee (i.e., presumably, under a public service employment program). He went to work for Sabar, Inc. a subrecipient of SFETC in January 1978. The ALJ found that Mr. **Machado** had at that point been discharged from employment with SFETC without the procedural protections required by the then applicable CETA regulations. (29 CFR 98.26 (1975 ed.)) ^{2/} SFETC was ordered to pay back pay to Mr. **Machado** for a period of 18 months from his discharge. Back pay was limited to 18 months by the ALJ because that is the maximum permissible period of CETA participation for a public service employment participant. (20 CFR 673.30(d).)

However, having stipulated before the Court of Appeals that Mr. **Machado** was a regular employee of SFETC when he was discharged, it is apparent that Mr. **Machado** is entitled to a modified remedy for what has been found to be an improper discharge. As a regular employee of SFETC, the 18 month limitation in 20 CFR 676.30(d) would not apply and Mr. **Machado** would be entitled to reinstatement as well as to back pay running from the date of his discharge to the date of reinstatement, subject to the limitation discussed below.

^{2/} Even a CETA employee is entitled to certain minimum **protections** upon discharge. 29 CFR 98.26(c).

SFETC has consistently maintained that Mr. **Machado** was not terminated in January 1978 but rather voluntarily resigned to go to work for Saber, Inc. If that were the case, of course, Mr. **Machado** would be entitled to no remedy whatsoever. But the ALJ rejected **SFETC's** view of the facts and found ~~that~~ when Mr. **Machado** left the employ of SFETC it was an involuntary discharge. The **ALJ's** decision became the decision of the Secretary (20 CFR 676.91(f).), **SFETC's** Cross Petition for Review in the Court of Appeals was dismissed as "improperly filed", and its Motion to Intervene in Mr. **Machado's** Petition for Review was denied. The findings of fact of the ALJ, therefore, except as modified by stipulation of the parties and order of the Court of Appeals in **Machado** v. U.S. Department of Labor (5th Cir. No. 81-5643) are res judicata and binding on SFETC.

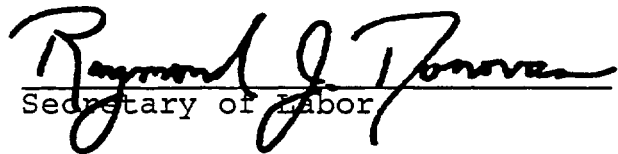
I note, however, that a considerable period of time has passed since Mr. **Machado's** discharge. Any **back** pay due, of course, must be reduced by appropriate set-offs such as any of Mr. **Machado's** interim earnings. If there were periods of unemployment since January 1978 Mr. **Machado** should show what efforts he made to secure employment. Therefore, this matter will be remanded to the ALJ to determine the exact amount of back pay due, including interest. Mr. **Machado** shall come forward with records or evidence of his employment and efforts to find employment since January 1978 if he was unemployed at any time during this period. SFETC shall be permitted a reasonable amount of discovery on these questions to prepare for

the hearing on back pay, and shall be afforded an opportunity to show that Mr. **Machado** did not exercise due diligence in mitigating damages.

Therefore, it is ORDERED:

1. That Respondent, South Florida Employment and Training Consortium, **shall** immediately reinstate complainant Armando **Machado** to his position as affirmative action coordinator or a comparable position; and

2. This matter is remanded to the ALJ for calculation of back pay due complainant, in accordance with the above decision.


Secretary of Labor

Dated: **FEB 19** , 1982
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Machado v. south Florida Employment & Training Consortium
Case No.: 80-CETA-494
Document: "Decision and Order of the Secretary of Labor"

Copies of the above-referenced document were mailed to the persons listed below on *February 22*, 1982.

David M. Drachler

CERTIFIED MAIL

Associate Solicitor for
Employment and Training
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-2101
Washington, D.C. 20210
ATTN: Neilda Lee

Jerold Reichler, Esq.
420 Lincoln Road
Suite 438
Miami Beach, Florida 33139

Regional Administrator for
Employment and Training
U.S. Department of Labor, ETA
1371 Peachtree Street, N.E.
Atlanta, Georgia 30367

Office of Administrative Law Judges
U.S. Department of Labor
1111 20th Street, N.W. (7th Floor)
Washington, D.C. 20036
ATTN: Judge Litt and Everette E. Thomas;
Docket Room: Library